

## **City of Milton Public Comments:** **NPDES Phase II Draft Permit**

### Introductory Comments.

The standards, monitoring and reporting requirements of this Draft Permit would impose an enormous staffing and resulting fiscal burden on small jurisdictions. The City of Milton is comprised of approximately 6,000 residents which provide the city a relatively small tax base and a limited staff. Many of the city staff already perform multiple functions. Without state funding to hire additional personnel, Milton does not have the manpower or budget to successfully comply with this Draft Permit as it is currently written.

We are concerned that Ecology is using this mandatory permit process to impose monitoring and reporting requirements that are unnecessary for compliance with the Best Management Practice standards incorporated into the permit. The paperwork generated will be overwhelming for Ecology to effectively evaluate and serve only the purposes of those third parties looking for a basis to bring citizen clean water act claims.

Please review and consider the Comments listed below.

- **Clarify that municipalities are only responsible for discharges from their municipal separate storm sewer systems (MS4s) by deleting "into and" from S2.A.1 (page 9; lines 30-31).**
  - Basis for comment:
    - ~ The federal CWA regulates discharges **from** the MS4 system, not into the system. The proposed comment potentially transfers liability from the appropriately responsible party for stormwater discharges from private property into the public drainage system.
    - ~ Small municipalities do not have the funding or staff to implement this requirement as it is currently written.
  - Alternative suggestion: Delete the following phrase from existing statements under Section 2.A.1 Authorized Discharges:

"All discharges ~~into and~~ from municipal separate stormwater sewer systems (MS4s) owned or operated by Permittees must be in compliance with this permit."
- **Delete section S4.A (page 11; lines 5-7) from Compliance with Standards, and delete reference to RCW 90.48.520 from the definition of "All known, available and reasonable methods of prevention, control and treatment" in the Definitions and Acronyms section.**
  - Basis for deletion:
    - ~ Proposed section S4.A is unacceptable because it would make stormwater programs (MS4s) inappropriately subject to a state law

provision regarding wastewater treatment. RCW 90.48.520 applies to discharge permits for wastewater from treatment facilities.

- ~ The federal water pollution control act (CWA) and the Washington state water pollution control act (WPCA) distinguish between wastewater and storm water. Although they are each a "pollutant" when discharged into a water of the U.S., they are distinctly different pollutants; and the statutes and regulations contemplate that they will be regulated differently.
- ~ It would be contrary to the structure of the CWA and the WPCA to apply wastewater standards to MS4s.

■ **Add language to clarify that implementation of SWMP = MEP = AKART under S5.A (page 11; lines 34-36).**

- Basis for comment:
  - ~ Clarify compliance standard.
  - ~ The state standard should be consistent with MEP. The permit should make clear that what is reasonable and what is practical are essentially the same with respect to storm water discharge.
- Alternative suggestion: Add the following language to existing statements under Section 5.A Stormwater Management Program:

"The Stormwater Water Management Program (SWMP) shall be designed to reduce the discharge of pollutants from regulated small MS4s to the MEP and protect water quality." Add: Compliance with the permit and implementation of the SWMP is deemed to be compliance with this MEP requirement, state AKART requirement and requirement to protect water quality.

■ **Remove all references in the permit and Appendix 1 to sections of the 2005 Ecology Stormwater Manual other than the Manual's minimum requirements, thresholds, definitions, adjustment and variance criteria.**

- Basis for deletion:
  - ~ Having the references to other sections of the 2005 Ecology Stormwater Manual in Appendix I and the permit language is a defacto Manual requirement that goes well beyond minimum technical requirements of the Clean Water Act.
  - ~ See attached Ecology Stormwater Manual policy statement regarding the Manual as guidance; **NOT a regulatory requirement**. Ecology appears to be making a backdoor effort at making the requirements of the 2005 Manual mandatory. The implication is that anything less than compliance with the 2005 manual is non-compliance with BMPs.
  - ~ See attached final Phase II NPDES comment letter from Regional Road Maintenance ESA Forum that addresses this same subject (expanded to cover other documents included as permit conditions by reference) in the bullet labeled "Outside Documents."

- **Remove all references in the permit to “Illicit Discharge Detection and Elimination: A Guidance Manual for Program Development and Technical Assessments” as a requirement for compliance.**
  - Basis for deletion:
    - ~ See attached final Phase II NPDES comment letter from Regional Road Maintenance ESA Forum that addresses this same subject (expanded to cover other documents included as permit conditions by reference) in the bullet labeled "Outside Documents."
    - ~ Small municipalities do not have the funding or staff to implement this manual.
  
- **Delete the requirement for cost tracking in S5 (page 5, lines 9-11), S6 (page 24, lines 20-22), and S8 (page 44, lines 8-11).**
  - Basis for deletion:
    - ~ See attached final Phase II NPDES comment letter from Regional Road Maintenance ESA Forum that addresses this same subject (expanded to cover other documents included as permit conditions by reference) in the bullet labeled “Annual Cost Tracking”.
    - ~ Small municipalities do not have the funding or staff capabilities necessary to add this requirement to reporting activities.
  
- **Change the definition of “Pre-developed condition” in Appendix 1. The current language requires that mitigated stormwater flows meet a predevelopment forested condition.**
  - Basis for comment: See attached final Phase II NPDES comment letter from Regional Road Maintenance ESA Forum that addresses this same subject (expanded to cover other documents included as permit conditions by reference) in the bullet labeled “Pre-developed Forested Conditions”.
  - Alternative suggestion: Mitigate flows to the actual predevelopment land use condition.
  
- **REQUEST – Reissue the revised Phase I WSDOT permit at the same time as the general Phase I and II permits.**
  - Basis for request:
    - ~ Ensure consistency between permittee conditions and obligations.
    - ~ Ensure fairness and equal treatment for permit applicants.
  
- **REQUEST – Form a Stormwater Partnership with Phase I and Phase II jurisdictions, environmental groups, other interested stakeholders, and Ecology staff from the Water Quality (NPDES) Program, Environmental Assessment Program, and a policy level staff person that spans internal program divisions for the creation of a monitoring program.**
  - Basis for request: The General Permit should be a tool used to protect and assist municipalities in the enforcement of Best Management Practices, not a vessel to gather research for the Department of Ecology with no viable programs for examination or use of data.
  - Rationale: This on-going partnership will be responsible for:

- ~ Coordinating with the State on a stormwater baseline and trend assessment monitoring strategy at a watershed level that would link and coordinate with salmon recovery and Puget Sound Initiative programs.
- ~ Developing and replacing existing monitoring language in Phase I and II permits with language that reflects a monitoring program that would provide:
  - Meaningful management information for improving BMP selection and making other stormwater management decisions
  - Reliable indicators that SWMP actions were making reasonable progress towards desired outcomes
  - Coordination and analysis of information across jurisdictions and agencies through the partnership to reduce redundancies, realize efficiencies, and improve clarity